



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0739]

RIN 1625-AA00

Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu,
Hawaii

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone while the U.S. Navy Blue Angels Squadron conducts aerobatic performances over Kaneohe Bay, Oahu, Hawaii. This safety zone encompasses a small area of the Kane'ohe Bay Naval Defensive Sea Area, including an area that extends approximately 150 yards northeast and 250 yards southwest of the Defensive Sea Area. This safety zone extends from the surface of the water to the ocean floor. This safety zone is necessary to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aircraft low flying, high powered jet aerobatics over open waters. Vessels desiring to transit through the zone can request permission by contacting the Honolulu Captain of the Port at telephone number 808-842-2600.

DATES: This rule is effective from 9:00 a.m. September 28, 2012 through 5:00 p.m. September 30, 2012. This rule will be enforced on a daily basis from 9:00 a.m. through 5:00 p.m. September 28 through September 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0739]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808-522-8264 ext. 352, e-mail Scott.O.Whaley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to air show participants, participant aircraft, spectators, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50

U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On May 14, 2012, Kaneohe Bay Air Show 2012 coordinators informed the U.S. Coast Guard of a State of Hawaii approved Air Show plan that include an aerial performance "show box" extending beyond the Kane'ohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941. Within this "show box", the U.S. Navy Blue Angels Squadron will conduct aerobatic performances, exhibiting their aircraft's maximum performance capabilities, over Kaneohe Bay, Oahu, Hawaii during a 3-day period. Taking into account the hazards associated within this "show box" during the Squadron's high powered multiple jet aircraft performances, and that Kaneohe Bay normally experiences heavy waterway traffic during the weekends, a safety zone for the portions of the "show box" that extend beyond the Kane'ohe Bay Naval Defensive Sea was determined to be appropriate by the Captain of the Port so as to ensure the safety of all watercraft and the general public during the Blue Angels' performances.

C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) the safety zone will be enforced for only eight hours each day for a three day period; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Honolulu or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Miami or a designated representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of

vessels intending to enter, transit through, anchor in, or remain within that portion of Kaneohe Bay encompassed within the safety zone from 8:00 a.m. until 5:00 p.m. on September 28, 29, and 30, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone to protect the public on navigable waters of the United States. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub.

L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-210 to read as follows:

§ 165.T14-210 Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, Hawaii.

(a) Location. The following area is a safety zone: All waters contained within an area composing of one box on Kane'ohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941, in Kaneohe Bay, Oahu, Hawaii. This box extends approximately 150 yards northeast and 250 yards southwest of the Defensive Sea Area and is bound by the following points: 21° 26.449' N 157° 47.071' W then south to 21° 26.270' N 157° 46.895' W then northeast to 21° 27.943' N 157° 44.953' W then west to 21° 28.016' N 157° 45.250' W returning southwest to the starting point. This safety zone extends from the surface of the water to the ocean floor. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19359.

(b) Regulations. (1) Entry into or remaining in the safety zones described in paragraph (a) of this section is prohibited unless authorized by the Honolulu Coast Guard Captain of the Port.

(2) Persons desiring to transit these safety zones may contact the Honolulu Captain of the Port on VHF channel 16 (156.800 MHz) or at telephone number 808-842-2600 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) Enforcement period. This rule is effective from 9:00 a.m. September 28, 2012 through 5:00 p.m. September 30, 2012. This rule will be enforced daily between the hours of 9:00 a.m. through 5:00 p.m. from September 28 through September 30, 2012.

(d) Penalties. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 27, 2012

J. M. NUNAN
Captain, U.S. Coast Guard
Captain of the Port Honolulu

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Date: 09/13/2012]